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12 **UNITED STATES BANKRUPTCY COURT**
13 **FOR THE DISTRICT OF NEVADA**

14

(RENO)

15

In re Case No. BK-N-13-51237

16

PAUL A. MORABITO, an individual,

Chapter No. 7

17

Alleged Debtor.

18 **DECLARATION OF PAUL A. MORABITO**
IN SUPPORT OF MOTION TO DISMISS
INVOLUNTARY CHAPTER 7 PETITIONS

19

Date: TBD
Time: TBD
Place: Courtroom 1
C. Clifton Young Federal
Building
300 Booth Street
Reno, NV 89509
Judge: Hon. Gregg Zive

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I, Paul A. Morabito, declare as follows:

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1. I have personal knowledge of the facts stated herein and, if called as a witness, I
could and would competently testify thereto.

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28 2. I have prepared this declaration in connection with the Motion (the "Motion") to
Dismiss the Involuntary Chapter 7 Petitions filed by JH, Inc. ("JH"), Jerry Herbst ("Herbst"), and

1 Berry-Hinckley Industries (“BHI”) (collectively, “Herbst”).

2 **Consolidated Nevada Corporation**

3 3. Consolidated Nevada Corporation is a Nevada corporation that does not operate or
4 conduct any business, holds no material assets and has a single obligation—the obligation to the
5 Petitioning Creditor in the amount of approximately \$12 million.

6 **Paul A. Morabito**

7 4. I am an unmarried individual; I have no spouse or domestic partner.

8 5. As of June 20, 2013 (the “Petition Date”), to the best of my knowledge, my assets
9 consisted of approximately the following: (i) cash of less than \$1,000; (ii) approximately \$10,000
10 in two bank accounts; (iii) ownership of Consolidated Nevada Corporation (value *less than* \$0);
11 (iv) ownership of a commercial property through a Nevada LLC (value of approximately
12 \$150,000); and (v) personal effects (i.e. clothing and home furnishings).

13 6. I have not hidden my assets or financial affairs from Herbst or fraudulently
14 transferred any assets for less than fair market or reasonably equivalent value.

15 7. Although I had no significant debts on the Petition Date other than credit card debt
16 and the obligation to the Petitioning Creditor, I had in excess of 12 creditors on such date. There
17 may be more, but my creditors on the Petition Date included: Jerry Herbst; Lippes Mathias
18 Wexler and Friedman (law-firm); Robison, Belaustegui, Sharp & Low (law-firm), Verizon
19 (phone), AT&T (phone and internet), Anthem (insurance), landlord for residence in Los Angeles,
20 Land Rover Financial (auto lease), The Gas Company, Time Warner, Chartis Insurance, LA Dept.
21 of Water & Power, Bank of America (4 separate credit card accounts), Citibank (credit card).

22 8. With the exception of the obligations to the Petitioning Creditor (Herbst, et al.), at
23 all relevant times prior to the Petition Date, the obligations to all of my creditors were paid as they
24 came due.

25 **Obligation to Herbst and Affiliates**

26 9. There is one obligation owing by me and CNC to the Petitioning Creditor. The
27 Obligation arises from litigation in Case No. CV07-02764, in the Second Judicial District Court of
28 the State of Nevada, in and for the County of Washoe (the “State Court”), captioned Consolidated

1 Nevada Corp., et al., v. JH, Inc., et al. (the “State Court Case”).

2 10. During appeal of a judgment that was later vacated by agreement, we entered into
3 that certain Settlement Agreement and Mutual Release, effective as of November 30, 2011 (the
4 “Settlement Agreement”). A true and correct copy of the Settlement Agreement is attached hereto
5 as “Exhibit A”, hereto.

6 **Discovery, Payments, Defaults and Attempts To Enforce Remedies**

7 11. During the period from January through June, 2011, I provided extensive discovery
8 to the Petitioning Creditor regarding my assets, liabilities and financial affairs, including credit
9 card, bank statements, tax returns, business ledgers, wire transfer receipts and corporate financial
10 statements.

11 12. In February and March, 2011, I caused to be delivered approximately 30 banker-
12 boxes of tax related records to the Petitioning Creditor and its financial expert, which records were
13 reviewed by the Petitioning Creditor in discussion with my accountant.

14 13. Additionally, the Petitioning Creditor conducted my depositions and a deposition of
15 Michelle Salazar, a forensic accountant that I hired.

16 14. As of the Petition Date, I have made payments to, or for the benefit of, Jerry Herbst
17 in the amount of approximately \$7.7 million.

18 15. I understand that I have not made all of the payments due under the Settlement
19 Agreement. At this time, I do not have the assets necessary to make the payments due.

20 16. Following discussions and negotiations with Jerry Herbst, on or about, March 1,
21 2013, I entered into a forbearance agreement (the “Forbearance Agreement”) with respect to the
22 exercise of the Petitioning Creditor’s available remedies under the Settlement Agreement. A true
23 and correct copy of the Forbearance Agreement is attached as “Exhibit B”, hereto.

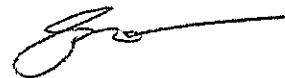
24 17. I was unable to make the specified payments required by the Forbearance
25 Agreement.

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1 I declare under penalty of perjury of the laws of the United States of America that the
2 foregoing is true and correct. Executed this 15th day of July 2013, at London, England.

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CERTIFICATE OF SERVICE

Pursuant to FRBP 7005 and FRCP 5(b), I certify that I am an employee of ROBISON, BELAUSTEGUI, SHARP & LOW, that I am over the age of 18 and not a party to the above-referenced case, and that on the date below I caused to be served a true copy of the **Declaration of Paul A. Morabito in Support of Motion to Dismiss Involuntary Chapter 7 Petition** on all parties to this action by the method(s) indicated below:

X I hereby certify that on the date below, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

Gabrielle A. Hamm
bknotices@gordonsilver.com;
bankruptcynotices@gordonsilver.com
*Attorney for Creditor Berry-Hinckley
Industries, Creditor JH, Inc., Creditor Jerry
Herbst*

U.S. TRUSTEE - RN - 11
USTPRegion17.RE.ECF@usdoj.gov
U.S. Trustee

X by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:

BMW Financial Services NA, LLC Department
Post Office Box 201347
Arlington, TX 76006

DATED: This 15th day of July, 2013.

/s/ Mary Carroll Davis